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Summary record of the 26th meeting
Held at Headquarters, New York, on Thursday, 20 October 2011, at 3 p.m.

Chair: Mr. Zelioli (Vice-Chair) ..... (Italy)

Contents

Agenda item 69: Promotion and protection of human rights (*continued*)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*)

(c) Human rights situations and reports of special rapporteurs and representatives (*continued*)

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11-55694 (E)

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The meeting was called to order at 3 p.m.

Agenda item 69: Promotion and protection of human rights (*continued*) (A/66/87)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/66/274, A/66/216/, A/66/272, A/66/342, A/66/342/Add.1, A/66/204, A/66/284, A/66/253, A/66/293, A/66/372, A/66/161, A/66/310, A/66/156, A/66/203, A/66/285, A/66/262, A/66/330, A/66/268, A/66/264, A/66/289, A/66/283, A/66/254, A/66/271, A/66/270, A/66/269, A/66/265, A/66/290, A/66/325, A/66/225, and A/66/314)

(c) Human rights situations and reports of special rapporteurs and representatives (*continued*) (A/66/343, A/66/267, A/66/361, A/66/322, A/66/358, A/66/365, A/66/374, and A/66/518)

1. **Mr. Lumina** (Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly, economic, social and cultural rights) said that export credit agencies, the major source of public financing for foreign corporate involvement in large-scale industrial and infrastructure projects, had assumed an increasingly significant global role in recent years. A large number of such projects, however, had severe environmental, social, and human rights impacts, and in some cases had contributed to unsustainable sovereign debt burdens.

2. Export credit agency-related debt constituted the largest component of developing-country debt. It contributed directly to sovereign debt when an agency lent to a Government or foreign public entity, or made guaranteed or insured commercial credit available to such entities or to Governments; in the event of default by the public entity, its debt became part of the country's sovereign debt. Export credits generated sovereign debt indirectly in the form of sovereign counter-guarantees, where an agency obtained from the recipient's Government a sovereign counter-guarantee for project insurance accorded by the agency to an exporter. In the event of default or failure of the project, the agency compensated the company, then sought reimbursement from the Government; if the Government was unable to pay, the amount owed was added to the country's sovereign debt. The generous terms needed in order to attract private investments for export credit agency projects could have serious budgetary implications for Governments.

3. Backing by such agencies reduced pressure on investors to exercise due diligence in assessing risk, and could thus contribute to the debt problems of developing countries. Cancelled export credit agency debts could be reported as official development assistance and hence be funded by official aid budgets.

4. Lack of transparency and accountability, ascribable to various factors, increased the difficulty of ensuring that export credit agencies provided responsible credit, performed due diligence and respected human rights and environment protection standards. Loans and guarantees for extractive industry projects were particularly detrimental to human rights and the environment, and such projects had also been implicated in corruption cases. States were under obligation to regulate their activities and to ensure that the projects supported did not result in or contribute to human rights abuses. Private corporations financially supported by export credit agencies also bore responsibility for the human rights impact of their activities, in addition to their obligation to comply with national laws.

5. The current international regulatory framework for their activities consisted of non-binding principles and recommendations adopted by the International Union of Credit and Investment Insurers (the Berne Union) and the Organization for Economic Cooperation and Development (OECD). The role of the Berne Union was to exchange information on foreign buyers in order to reduce commercial risk. The OECD 2003 Common Approaches established non-binding commercial project procedures for Governments and export credit agencies, they covered environment impact but made no reference to human rights. As the operations of such agencies continued to be largely unregulated, a more robust international regulatory framework was needed.

6. **Ms. Camino** (Cuba) said that her delegation encouraged the Independent Expert to pursue his work on the Draft Guiding Principles on Foreign Debt and Human Rights, and looked forward to an update on progress achieved at the next session of the General Assembly.

7. **Mr. Lumina** (Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly, economic, social and cultural rights) said that the work on the Draft Guiding Principles was progressing well. The draft would be considered at a meeting in November 2011, and an intergovernmental consultation would be held early in 2012. It was hoped that the text would be approved by all States prior to submission to the Human Rights Council at the June 2012 session.

8. **Mr. Heyns** (Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions) said that his report (A/66/330) analysed the international standards applicable to the use of lethal force by law enforcement officers during arrest, while properly recognizing the obligation of law enforcement officials and States to protect the public. His research had focused on the question of whether law enforcement officers had special powers to use lethal force in situations of resisting arrest. While the discussion focused on the legal framework for arrest, the real-world factors underlying excessive use of force, grounded in deficiencies in institutions and the rule of law, needed to be better understood and addressed.

9. The guidepost for limitation of the right to life had to be the principle that under closely defined circumstances one life could be taken as a last resort in order to protect another life or lives, not to protect other rights and interests. When because of the imminence of the threat the police had no choice but to shoot a resisting suspect, such action could be considered justified as an act of private defence, because the purpose was to save life, and the life of an innocent party took priority over that of the aggressor.

10. By international standards, use of lethal force during arrest was permissible, in exercise of the power of private defence available to everyone, only when the suspect had committed or threatened to commit a crime involving serious violence or posed an immediate or on-going threat, the action was aimed at protecting life, and no less harmful means were available.

11. In many jurisdictions the determining consideration for use of force was the seriousness of the crime, but there was increasing focus on objective indicators of continuing danger posed by suspects. Many domestic legal systems imposed the general requirement of "reasonableness" on the part of the police, a term unduly open to interpretation.

12. The ideal model for the use of lethal force during arrest appeared to be one in which the suspect had committed a violent crime and posed a continuing danger to society, the model that most strongly embodied the protection of life principle. The question was to determine if a combination of legislation, court decisions, police training, and practice as a whole in a given country met those standards.

13. Targeted killing, in the form of drone attacks or raids outside the context of armed conflict, violated the human rights framework on arrest and raised serious right-to-life issues. When they were carried out in a non-international armed conflict, international human rights as well as humanitarian law applied. The latter required the presence of military necessity and direct participation in hostilities before targeting a person, which made some forms of targeted killing highly problematic. Absent imminent attack and threat, the right to self-defence did not come into play. State killing of an opponent and of its own citizens in other countries, outside armed conflict, set a problematic precedent. Whether or not such actions complied with domestic law, the international community was still required to impose its standards.

14. Drone warfare challenged the assumptions of international humanitarian law and posed a risk to a system designed to be a central ingredient in dealing with future conflicts. Drone technology and the safety it offered to its operators spread the range of potential targets across the globe, and allowed States to eliminate their opponents wherever they were at no risk to their own people. Pending decision by the international community on how to deal with drones and targeted killing as tools of warfare, the current legal system needed to provide the framework within which States should act.

15. He had made a number of recommendations in his report, including reform of domestic laws on arrest to bring them into conformity with international standards. Guidance for the police needed to focus on the laws and values that should inform their use of, and the permissible levels of, force, and on other issues, such as the need to give priority to the safety of ordinary citizens. Laws that allowed use of lethal force in defence of property, and those that gave citizens the same powers as the police during arrest, should be

revoked. States should ensure that the overall effect of laws, training, policies and practices ensured that fleeing suspects who had committed violent crimes would be shot only if they posed a continuing threat to the lives of others. Governments needed to focus on development of police tools and strategies that minimized the need for use of lethal force during arrest. Police and independent monitoring agencies needed to keep data on use of lethal force and other dangerous forms of coercion. Targeted killings should not be undertaken in ways that undermined human rights or humanitarian law, and such killings should be reviewed by the international community.

16. **Ms. Martin** (United States of America) said that her country condemned extrajudicial, summary, and arbitrary executions. It agreed that all States were obligated to take effective measures to combat such killings and punish perpetrators; it would review the principles and recommendations put forth by the Special Rapporteur.

17. The report focused on domestic police powers and the distinctions between the two bodies of international law that could apply to the use of force by Governments: international human rights law governing use of lethal force in domestic law enforcement situations, and international humanitarian law governing the use of force in armed conflict. The United States was concerned that the comments on operations during armed conflict obscured that distinction and contributed to confusion about the applicable rules.

18. Her delegation had concerns regarding the study of the operation against Osama bin Laden, and rejected any suggestion that his killing could be considered unlawful. He had been the leader of an enemy force that was continuing to plot attacks against the United States of America. Under the law of war he was thus a legitimate target, and targeting him was an act of national self-defence. The conduct of the operation had comported with law-of-war principles of distinction and proportionality. United States forces had been prepared to capture him if he attempted to surrender. He did not so attempt, and those forces were authorized to use force against him.

19. Her Government acknowledged that the use of force against al-Qaeda outside of active battlefields was an issue on which there was disagreement, and viewed its authority to use force in such situations as being subject to rules of international law that had to be assessed on a case-by-case basis.

20. **Ms. Brichta** (Brazil) said that her country shared the view that observance of international human rights standards and humanitarian law must guide police action in cases of arrest, and that human rights training and use of modern law enforcement measures were important. The policies and programs being implemented by the Government of Brazil relating to the need to improve control and surveillance of the use of lethal force by the police included the National Public Security and Citizenship Program (PRONASCI), which coupled traditional public-safety strategies with actions aimed at addressing the root causes of violence, and included training of police officers in use of modern non-lethal technologies and investigation methods.

21. **Mr. de Bustamante** (Observer for the European Union) asked for further elaboration on measures to neutralize factors driving excessive use of lethal force by public security agents. He would also like a more detailed explanation of the concept of sacrificing one life as a last resort to protect another life or lives. The terms on which investigations should be conducted and accountability measures enforced in order to uphold the principle of life should also be clarified. He asked for examples of the use of modern technology to ensure transparency and accountability in targeted killings.

22. **Mr. Barriga** (Liechtenstein) asked how accountability for extrajudicial, summary, and arbitrary executions could be enforced when States were unwilling or unable to do so and were not Parties to international accountability mechanisms such as the International Criminal Court, as was the case with, for example, Syria and Sri Lanka.

23. **Mr. Heyns** (Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions) said that the applicable legal framework in law enforcement was human rights law; in international armed conflict it was human rights law and international humanitarian law. Care must be taken when making the distinction that only humanitarian law applied during armed conflict.

24. All constitutions contained provisions stating that during armed conflict and in emergencies certain rights could be derogated from, implying that the other human rights remained in force. The complementarity of the two types of law must be recognized. In a law

enforcement operation, the option of surrender should be actively offered.

25. A standard-setting 2006 Israeli Supreme Court decision had found that the possibility of using less than lethal force in a given situation required that option to be considered, and whether the particular circumstances required the use of lethal force without an offer of arrest as an option.

26. A battlefield situation was one thing, a situation involving a single person under surveillance another. The broader context had to be considered; clear and definitive lines could not be drawn. Underlying assumptions of law, international humanitarian law in particular, were being challenged by asymmetric warfare and terrorism, and an acceptable framework must to be established to avoid a situation of unlimited warfare in which borders were ignored and anyone could be a target.

27. With respect to Osama bin Laden, there had been mixed messages about whether surrender would have been accepted, and he appreciated the confirmation that the option would have been offered and accepted.

28. Impunity was an extremely important factor. Police awareness of the existence of a system of accountability affected their way of looking at the level of force used. It was important to avoid the use of elite units with operational independence, a police culture of silence, and a culture of silence between prosecutors and the police. The dangerous public rhetoric of war must be avoided; it could lead to a much lower level of protection of the right to life and promote impunity.

29. Prevention and accountability were the two components of protection of the right to life. Accountability entailed investigation, prosecution, and punishment, which could take various forms. Failure to take these steps made a State complicit in the crime committed. Visibility was important; it must be clear to the public that if the police crossed the line in respect to protection of right of to life, in order to restore that protection there would be visible accountability to the State. Use of cameras and similar recording technologies made it possible to determine exactly what took place during operations, ensuring accountability and thus preventing abuse.

30. With respect to States unable or unwilling to cooperate in ensuring accountability, there existed a range of potential avenues of action in cases of large-scale killings. Referral by the Security Council to the International Criminal Court and international investigation were two options. The underlying idea, once again, was accountability. If local investigation did not meet international standards, the international community had an obligation to pursue the matter.

31. **Ms. Alsaleh** (Syrian Arab Republic) said that her country was committed to complying with all relevant national conventions, and national law prohibited all forms of extrajudicial execution. In the event of repeated mention of her country in statements by the representative of Liechtenstein, it would exercise its legitimate right of reply.

32. **Mr. Beyani** (Special Rapporteur on the human rights of internally displaced persons), introducing his report to the General Assembly (A/66/285), said that since assuming the mandate nearly one year ago, he had identified four thematic areas on which he intended to concentrate: promoting the ratification and implementation of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention); the situation of IDPs living outside camp settings; women and internal displacement; and, finally, the subject of his current report, climate change and internal displacement.

33. Due to the high numbers of persons displaced by sudden onset natural disasters each year and the significant and growing problem of slow onset disasters such as desertification or drought due to climate change, preventing and addressing that displacement would be a major challenge. The need to put in place adaptation measures and to enhance understanding, coordination and cooperation at all levels had been recognized by the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC). His report explored the links between climate change and internal displacement from a human rights perspective and in relation to other global trends and concerns, notably population growth, urban migration, and food, water and energy insecurity. The most serious effects of climate change, including displacement, were predicted to affect poor regions and countries disproportionately and populations already in vulnerable situations due to poverty and other factors, and would have significant consequences for the enjoyment of human rights and for human security. Therefore, timely and durable solutions must be found to prevent and address

climate-induced displacement, international and regional standards should be translated into national laws and policies and disaster risk reduction and management frameworks established.

34. He had undertaken two official country visits, to the Maldives and Kenya, the full reports of which would be submitted to the Human Rights Council in March 2012. During his visit to the Maldives, he had observed how the effects of climate change had already had an impact on the local population's enjoyment of many human rights; urgent protection and assistance were needed to find durable solutions to mitigate and adapt to those changes. He commended the authorities for drawing the attention of the international community to the issue and called on them to adopt the bills on disaster risk reduction and management. He urged them, with international support, to take the additional necessary steps to prepare for and address internal displacement as a result of climate change.

35. During his recent visit to Kenya, he had found that there was an urgent humanitarian need to address the dire living conditions and human rights of those displaced by post-election violence and by natural disasters and environmental conservation projects. Many had been in displacement for several years and faced the type of health, shelter and education challenges normally associated with the initial emergency phase. He commended the Government for having taken some important steps to address the issue, yet challenges remained. A comprehensive strategy on internal displacement must be adopted, with sufficient funding in place, including from international donors, to implement programmes. He encouraged the Government to adopt the draft policy on IDPs, to ratify the Kampala Convention, improve registration systems and ensure that those systems covered all categories of IDPs. A more consultative approach should be adopted to allow IDPs to make a voluntary and informed choice between integration, return or resettlement. He strongly encouraged the Government and civil society, with the support of the international community, to continue their peace-building and reconciliation efforts, which were essential to prevent future internal displacement and ensure respect for human rights.

36. **Mr. Faizal** (Maldives) said that the issues of displacement due to climate change and natural disasters were very important to the Maldives and were the primary focus of the Government's domestic and international agenda. The Government was grateful to the Special Rapporteur for his visit to the country in July 2011. The forthcoming report addressing the particular situation of low-lying island States, such as the Maldives, was eagerly anticipated.

37. In 2004, the tsunami had destroyed many islands of the Maldives and had affected two-thirds of the population, either though direct displacement or through overcrowding on less-affected islands. It had highlighted how unprepared the country was to respond to sudden disasters and the resulting issues of internally displaced persons. Full recovery from a tragedy of that magnitude was a long and difficult process, and the countries was still working to provide permanent homes for the 1,600 people still living in shelters.

38. Although the topic at hand was "internal" displacement, it was an international concern. As a small island nation, Maldives had limited resources and space, and as more people were displaced or more parts of the country were made uninhabitable due to the effects of slow-onset climate change, it would be unable to provide for many of the basic human rights such as adequate food and shelter. He therefore supported the call to establish a human rights-based framework focusing on the principles laid out in the report.

39. Maldives had endorsed a comprehensive Strategic National Action Plan that included disaster risk reduction and climate change mitigation. A Disaster Management Centre had also been established, which was committed to taking proactive and timely measures to reduce the impact of disasters on the country's people and economy. The Government understood the need for legislation to implement the Action Plan, to ensure proper funding for the relevant support institutions, and to address the rights and needs of internally displaced persons. It would work diligently to have such a law in place as soon as possible.

40. **Mr. de Bustamante** (Observer for the European Union) said that the European Union welcomed the active engagement of the Special Rapporteur, in particular with regard to the mainstreaming of the human rights of internally displaced persons into all relevant parts of the United Nations system, and enhancing cooperation with regional and international organizations.

41. Noting the engagement and close cooperation in the area of protecting internally displaced persons, as

outlined in the report, he asked what gaps and challenges remained in the coordinated provision of protection for internally displaced persons by the United Nations, or other international organizations.

42. The report emphasized the role of the Guiding Principles on Internal Displacement as a normative standard for the protection of persons displaced in a variety of contexts and in the different stages of displacement. He asked for more information on the extent to which States took the Guiding Principles into account in the development and implementation of national legislation and strategies to address internal displacement.

43. With regard to the theme of climate change and internal displacement, in particular the need for specific follow-up on the issue of internally displaced persons outside camps, he asked for more information about the progress achieved and any follow-up to his proposal to explore the gender dimensions of internal displacement, including by strengthening links with the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child and other relevant bodies. He would also like to know the Special Rapporteur's view on what would be the best way forward in elaborating alternative solutions and prevention strategies that would be especially effective for women and girls in the context of internal displacement.

44. He asked for more details about how the different adverse effects of sudden-onset and slow-onset events, such as climate change, natural disasters and environmental degradation, might have different consequences on internal displacement and on migration, as two separate categories deserving of particular attention.

45. **Ms. Shiolashvili** (Georgia) said that the right of return for Georgia's internally displaced persons remained a focus of the Government's attention. However, much remained to be done. Despite numerous resolutions on the question, the displaced citizens had still not been allowed to return to Abkhazia. She invited the Special Rapporteur to visit Georgia to continue working on the issue.

46. **Mr. Barriga** (Liechtenstein) welcomed the focus on the humanitarian consequences of climate change induced displacement. Liechtenstein agreed that comprehensive strategies were needed in order to adapt to such consequences. He asked how a human rights-based approach could best be incorporated into adaptation and mitigation measures. He also enquired about the Special Rapporteur's collaboration with other United Nations entities.

47. **Mr. Beyani** (Special Rapporteur on the human rights of internally displaced persons) thanked the Government of the Maldives for its response and its indication of further cooperation. He stood ready to work with the national authorities to harness international support for the programmes that had been initiated and to find durable solutions.

48. Responding to the points raised by the Observer for the European Union, he said that since the 2005 World Summit had recognized the Guiding Principles as the international framework for the protection of internally displaced persons, a number of States had used them not only as a basis for policy and a framework for the whole question, but had also drafted legislation around them. He was currently working with a number of Governments to ensure that the spirit and framework of the Guiding Principles would be implemented at the national level. Nobody could predict where the next climate-related event would take place, so it was important to have preparedness, mitigation and emergency response measures ready. The one gap that remained to be filled was to strengthen the institutional framework. Coordination through the Office for the Coordination of Humanitarian Affairs was being streamlined, but needed to be more effective at the country level.

49. With regard to the question of internally displaced persons outside camps, he noted that the issue had first been raised before the Standing Committee by his predecessor approximately two years ago. The approach at that time had been to find an agency to take the lead on the issue, but prevailing thought had been that existing activities would not permit that. Therefore he had begun with a thematic report to examine the best practices of the different agencies. The work that had been done in countries such as Colombia and Kenya would provide some best practices to work from. He hoped to build momentum for agencies to pursue the issue.

50. Turning to the questions of internally displaced women and follow-up, he said that he had decided to work with women's groups and agencies focused on women's issues. The first such body was the Committee on the Elimination of Discrimination

against Women, with whom he had worked out a framework and priorities. He was also working with UN-Women and civil society. It would take time to research the problems and experiences of internally displaced women and how best to help them. The first stage was to have a small expert group prepare an agenda and outline the issues in a report, then the task should be mainstreamed through all the treaty bodies. It was important to share a policy framework through the High Commission for Refugees, the Office of the United Nations High Commissioner for Human Rights and the Office for the Coordination of Humanitarian Affairs. He also wanted to work more directly with Governments to ensure appropriate legislative measures were in place.

51. With regard to the comments about distinctions between the effects of climate change and natural disasters, he said that some natural disasters were caused by extreme climatic variations, which required the population to adapt. Displacement was indeed a factor of adaptation, along with emergency response. With regard to the slow-onset effects of climate change, more long-term planning and response were needed.

52. Discourse on climate change from the environmental and human rights perspectives had emerged separately, and thus common understanding should be built. Whether for the slow- or sudden-onset effects of climate change, mitigation, preparedness and response measures were needed. Human rights jurisprudence from around the world focused on the responsibilities of States towards vulnerable areas.

53. Responding to the representative of Georgia, he said that he was aware of the situation there and was working closely with representatives in Geneva on the issue. His mandate was open and would accept the invitation extended to visit in the coming few years.

54. **Mr. Meyer** (Norway) said that his Government strongly supported the mandate of the Special Rapporteur and the Guiding Principles, and had facilitated the 2011 resolution on internally displaced persons. The issue was complex and wide-ranging. The number of IDPs was rising and up to 90 per cent of the total had been displaced as a result of climate change. Climate change was an impact multiplier and accelerator. Both the slow-onset and rapid-onset impacts of climate change related to the question of displacement: flooding forced people to flee, while desertification caused people to decide to move, making them likely to be classified as migrants rather than internally displaced persons. He therefore asked the Special Rapporteur where he drew the line between those categories.

55. **Ms. Ploder** (Austria) welcomed the focus on environmental factors and internally displaced persons from a human rights perspective. The human rights framework applied explicitly to natural disasters and the Guiding Principles were key in those instances. She asked the Special Rapporteur to give examples of how States were using the Guiding Principles in their climate change prevention, adaptation and mitigation strategies. She also asked for more details about how a framework for durable solutions could be helpful.

56. **Mr. Ledergerber** (Switzerland) welcomed the country-specific activities undertaken by the Special Rapporteur and said that he hoped the Special Rapporteur would be able to make more visits. The Kampala Declaration on Refugees, Returnees and Internally Displaced Persons in Africa would play a major role in the region, but still needed to be ratified by 15 States. He asked what support the international community could provide in order to facilitate the necessary ratifications.

57. **Ms. Ivanović** (Serbia) said that her country had many internally displaced persons from Kosovo who had been displaced for more than 12 years. Only 18,000 had returned thus far, less than 10 per cent of the overall number. The main concerns were security and property issues, and physical attacks on returnees. She asked how the Special Rapporteur intended to deal with protracted situations of internal displacement.

58. **Mr. Beyani** (Special Rapporteur on the human rights of internally displaced persons) said that the representative of Norway had raised an important point with regard to sudden-onset and slow-onset disasters as a result of environmental degradation. It was clear that both internal and cross-border movement were involved, but his mandate was not involved when movements took place across borders.

59. Environmental degradation might have to be examined as one of the causes of movement as part of adaptation to the slow-onset effects of climate change. If movement was an adaptation measure, a human rights framework would be needed, drawing on issues of preparedness, evacuations and health needs. Durable solutions would also be required. That might require a

change in thinking, since it had previously been thought that slow-onset climate change led simply to migration, but the element of compulsion should be examined carefully.

60. Responding to the representative of Austria, he said that the Guiding Principles applied to all phases — prevention as well as adaptation — but when movement became necessary special measures were needed. Adaptation required an examination of the applicability of durable solutions — i.e. whether return would be feasible. There needed to be a human rights framework of consultation with regard to resettlement or relocation, if there was a danger to life and safety. That only applied in cases of natural disaster, not slow-onset climate change.

61. Responding to the representative of Switzerland, he said that Sudan had accepted his request to visit and he had a standing invitation from both the north as well as what was now South Sudan. He was also in discussions with the Philippines and Pakistan and looked forward to receiving positive responses. With regard to support for ratification of the Kampala Declaration, it was useful to note the steps that had been taken by the African Union. The Group of Friends of the Great Lakes Region was also taking measures to help with ratifications. He had been invited to prepare a declaration for the International Conference of the Great Lakes Region, so perhaps the fifteenth ratification would follow.

62. Turning to the issues raised by the representative of Serbia, he noted the country's cooperation and said that he had looked at the question from the crisis onwards. Kosovo was not the only area involved; many people had also been displaced from Bosnia and Herzegovina and Serbia. Particular attention had been paid to Kosovo and he would have a mission there in 2012. Part of the problem in that case revolved around the unresolved situation regarding the status of the territory. However, encouraging measures had been taken by the European Union.

The meeting rose at 5.15 p.m.

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Summary record of the 27th meeting
Held at Headquarters, New York, on Friday, 21 October 2011, at 10 a.m.

Chair: Mr. Haniff. . . . . (Malaysia)
later: Mr. Zelioli (Vice-Chair) . . . . . (Italy)

Contents

Item 69: Promotion and protection of human rights (*continued*)

(b) Human Rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*)

(c) Human rights situations and reports of special rapporteurs and representatives (*continued*)

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11-55800 (E)

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The meeting was called to order at 10.05 a.m.

Agenda item 69: Promotion and protection of human rights (*continued*)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/66/156, 161, 203, 204, 216, 225, 253, 254, 262, 264, 265, 268-272, 274, 283-285, 289, 290, 293, 310, 314, 325, 330, 342 and Add.1, and 372)

(c) Human rights situations and reports of special rapporteurs and representatives (*continued*) (A/66/267, 322, 343, 358, 361, 365, 374 and 518)

1. **Mr. El Jamri** (Chair, Committee on the Protection of the Rights of All Migrant Workers and Members of their Families), stressing the importance of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, said that the situation of migrants and asylum-seekers fleeing recent events in North Africa was a reminder of their vulnerability to human rights violations. The Committee had adopted a statement on the situation of migrant workers and members of their families in Libya, urging the authorities to comply with their obligations under the Convention and encouraging the international community to provide assistance.

2. With over 200 million international migrant workers worldwide, economic data and research had shown that protecting migrant workers enhanced development and domestic productivity. Migration flows had made it essential to establish standards and migration policies that protected the rights of migrant workers, including undocumented workers, and the Convention — the only universal treaty covering specifically the rights of migrant workers — provided a valuable legal framework.

3. Twenty years on, however, the Convention's universality was far from achieved. While the rate of ratification had increased, with only 45 States parties, the limited number of ratifications was regrettable and posed a major challenge to the Committee. In connection with the twentieth anniversary of the Convention, the High Commissioner for Human Rights, Ms. Pillay, had invited the 15 States that had only signed it to reaffirm their commitment to the rights of migrant workers by ratifying it. A global campaign had been launched calling on Governments to accede to the Convention. A number of activities to promote the Convention had been held, and he had represented the Committee at various international events on migration organized by United Nations or European bodies and a host of civil society initiatives.

4. In its consideration of reports and its conclusions, the Committee continued to assist States parties by identifying gaps in the protection and implementation of migrants' rights and formulated recommendations on how best to remedy them. It had noted a number of shared or concerns, among which was that some domestic laws and policies were incompatible with the Convention. It had also underlined the importance of collecting data, training Government officials in human rights, guaranteeing that the right of migrant workers to effective remedy was not impeded and continuing efforts to fight human trafficking.

5. Several treaty bodies had recognized the vulnerability of domestic workers worldwide. Consequently, the Committee had been pleased to adopt general comment No. 1 on migrant domestic workers, in which it had identified protection gaps and formulated recommendations for States parties. It also welcomed the adoption of the International Labour Organization Convention No. 189 concerning Decent Work for Domestic Workers, whose complementarity with the Convention could not be overemphasized.

6. While the Convention made the distinction between regular and irregular migrants, the Committee was concerned that migration policies were becoming more stringent in certain countries at the expense of migrants' rights, as illustrated by large numbers of administrative detentions of undocumented migrants despite there being no empirical evidence that such measures were a deterrent. One of the conclusions of the Committee's Day of General Discussion on the rights of migrant workers in an irregular situation and members of their families, held in September 2011, was that, although the rights guaranteed by the Convention were already enshrined in other instruments, its added value was not negligible, being the only international human rights instrument devoted to migrant workers' rights.

7. To date, the Committee had examined 18 initial reports and 2 second periodic reports submitted by States parties. It was regrettable that many States parties were late in submitting initial reports — only 23 had been submitted, while 30 were overdue, often by more than five years. Accordingly, at its fifteenth

session the Committee had discussed the possibility of considering the implementation of the Convention in the absence of a country report, as in other treaty bodies. A final decision would be taken in 2012, after consideration of the modalities.

8. At its fourteenth session, to enhance its working methods, the Committee had adopted a new procedure: lists of issues to be taken up would be drafted and sent to State parties before they had submitted their periodic reports, and their replies would serve as periodic reports. It had the dual aim of facilitating reporting for States parties, particularly those with limited financial and human resources, and eliciting more focused and timely reports. That new procedure was optional, hence not contrary to the provisions of the Convention.

9. The Committee had also decided at its fifteenth session to adopt a fixed timetable for the submission of reports, which, if respected, would allow the Committee to consider the reports of all 45 States parties within five years, at a rate of nine reports per year instead of four. It would thus have to adopt six lists of issues before submission of reports to the sixteenth session in April 2012. That, in addition to the fixed timetable, would mean a substantial increase in the Committee's workload and, in turn, necessitate more meetings and additional staff.

10. The Committee welcomed the adoption of the Organization's green policy, which, by providing Committee members with a laptop and electronic files, had resulted in a paper-light fifteenth session. Lastly, he reiterated that the Committee stood ready to assist States wishing to ratify the Convention and to help all States to interpret and implement its provisions.

11. **Mr. Elshakshuki** (Libya) said that the former regime had harmed migrant workers by tempting or forcing some of them to take up arms against Libyans. He stressed, however, that any violations of migrants' rights in the aftermath of the victorious revolution were the result of individual actions and in no way reflected the policy of the National Transitional Council. The Council would seek to put an end to such violations and would ensure that the new Libya met its obligations under international instruments.

12. **Mr. Yahiaoui** (Algeria) asked what steps or activities were undertaken by the Committee, given the small number of State parties, to raise awareness on the part of States that had not yet acceded to the Convention, especially host countries, so as to achieve widespread accession to and ratification of the Convention.

13. *Mr. Zelioli (Italy), Vice-Chair, took the Chair.*

14. **Mr. Quintaes** (Brazil) asked, with regard to the condition of migrants from Latin America in the United States of America, whether the Committee intended to look into federal legislation that had been adopted.

15. **Mr. El Jamri** (Chair, Committee on the Protection of the Rights of All Migrant Workers and Members of their Families) said that he welcomed the developments in Libya and hoped that they would have a positive impact on migrants' rights. There had been three distinct phases in the Committee's dealings with Libya: the "before" situation, during which there had been many reports of violations of migrant workers' rights; the transition period, during which there had been some initial confusion, and the Committee, receiving information from OHCHR and NGOs on the difficulties encountered by many migrants in Libya, had appealed to neighbouring states, which faced similar problems for migrants, to keep borders open and to European Union countries to offer a humane reception to migrants coming across the Mediterranean; and the current situation, which would be discussed at the next session.

16. He welcomed Algeria's efforts to promote the Convention regionally and its involvement in the field of migrants' rights. Promotion was an ongoing task that was incumbent not only on the Committee but States parties as well. A steering committee had been established prior to the entry into force of the Convention to promote its ratification, and subsequently focused its work on periodic reports and on promotion, particularly through partnerships with civil society. In that regard, a platform for NGOs had recently been set up in Geneva to work specifically in migrant workers' rights. Ratification campaigns were under way in a number of countries.

17. A new development in 2011 had been the involvement of trade unions, and a permanent platform would be implemented to cooperate with the Committee. Previously, in the absence of trade union representation, migrant workers, particularly those in irregular situations, had had to defend themselves, as seen with construction workers in Paris and again in Abu Dhabi who had mobilized to demand their basic rights. Dialogue with different stakeholders such as members of parliament and international organizations had been successful, and he could say that there were

no valid financial, economic or technical arguments to counter the Convention — the only barriers remaining were political. It was important, therefore, to continue efforts to encourage wider ratification.

18. With regard to Latin American migrants, the Committee had examined the reports of many Latin American countries and was aware of difficulties that might arise with their neighbour to the north. However, its mandate covered only countries that had ratified the Convention. As the United States of America had not done so, the Committee could not make recommendations to the country in that regard, but it had voiced objections to some of its legislation in international forums.

19. The Convention had been in force for eight years, and he believed it was time for the Committee to take a new form of action. Migrant workers in irregular situations had often been singled out, with the excuse that the Convention gave them undue rights. That had been proven false, since migrants had those rights in their country of origin and often arrived in host countries in regular situations — for example, as seasonal workers or as foreign spouses of nationals. Circumstances in the host country could then lead them to become irregular: a seasonal worker had rights and responsibilities that were not always transferable from host country to country of origin, so he or she might prefer to stay on in the host country in order to continue receiving a pension.

20. There were many such examples. Furthermore, irregular migrant workers contributed to the economy of host countries, and it could be worthwhile to use the same moral argument, as had been done with child labour, to justify ratification. The Committee was seeking new approaches to demonstrate the important role that migrant workers played in development.

21. **Mr. Crépeau** (Special Rapporteur on the human rights of migrants), addressing the Third Committee for the first time in his capacity as Special Rapporteur, said his mandate would be guided by certain principles. Everyone was a migrant, or descendant of one, for migration was ingrained in humankind — it was a means of coping with environmental, political or economic adversity. Migration was not an anomaly. Migrants' rights were human rights. The International Bill of Human Rights stipulated that migrants, irrespective of their immigration status, were entitled to the same rights and dignity as all other citizens, save the right to vote or hold public office and the right to enter and stay in the country.

22. States should guarantee the same socio-economic services for migrant workers and their families as they did for their own nationals. While distinctions could be made based on immigration status, they must not be discriminatory and must be justified within the human rights framework. Guaranteeing dignity also meant addressing the vulnerability of migrants, especially irregular migrants and temporary migrant workers. It was important to help them fight exploitation and trafficking into new forms of slavery and find ways to avoid recourse to smuggling rings.

23. That did not imply that State authorities could not reserve some entitlements to citizens or specific migrant categories, or expel migrants in irregular situations. Any expulsion must be consistent with the human rights framework. Migrants who risked persecution and torture could seek asylum and should not be deported, nor should those who had founded families with host country nationals. Detention should only be a measure of last resort provided that a number of conditions were met, and alternatives should be explored.

24. Irregular migration was not a crime. Authorities increasingly referred to it in criminal terms and, in some cases, even criminalized irregular migration or assistance to migrants in an irregular situation. Paradoxically, those States had shown no intention of providing migrants with the guarantees enshrined in criminal law. Applying administrative law to migration to bypass the stringent requirements of criminal law could subject foreigners to abhorrent legal standards.

25. Xenophobic discourse had been mainstreamed over the last decade and was gaining increasing social acceptance in many countries owing to the lack of a credible political counter-discourse. There was, as yet, very little mobilization in favour of migrants, and even less so for irregular migrants. History had shown that other vulnerable groups had had their rights recognized by generating social and political sympathy. Migrants, however, were not organized, they spoke a different language, did not vote and sought to avoid attention for fear of being expelled.

26. While it was commonly said that migrant workers "stole jobs", it was important to remember that it was the market for their skills and employment, which locals found unacceptable, that had attracted them. It was sometimes forgotten that migration made a positive,

sometimes indispensable, socio-economic contribution to society and increased the competitiveness of host economies and that sealing borders was impossible in democratic States. Those factors should be taken into account in political discourse at all levels of government.

27. The work done on migration by international and regional organizations was crucial for advancing the rights and protection of all migrants. The International Labour Organization (ILO) had also been influential in setting standards, ensuring compliance with obligations under instruments and providing technical assistance. There were many opportunities for partnership and for stimulating dialogue as international cooperation on migration issues was on the rise. International instruments were essential tools to be ratified widely and their principles should be disseminated and implemented.

28. He looked forward to strengthening synergies to implement the Convention and engage in meaningful, forward-looking dialogue with States that had yet to ratify it. He reiterated that it was everyone's responsibility to ensure respect for migrants' rights and that States must comply with the international human rights obligations. Changing the often inflammatory political discourse on migration remained a challenge. It was important to have a balanced discourse on migration which recognized the cultural value of the circulation of talents and ideas and the need for migrant workers.

29. **Mr. Soemantri** (Indonesia) said his Government stood ready to continue working with Mr. Crépeau where his predecessor had left off. It was vital to increase joint efforts to encourage all countries of origin, transit and destination to adhere to an instrument that improved migration management and protection of migrants, and States should fulfil the minimum core obligations to ensure promotion and protection of those rights. Indonesia was fully committed to ratifying the Convention and wished to know what could be done to increase efforts to achieve its universal ratification. Referring to ILO Convention No. 189, concerning Decent Work for Domestic Workers, he asked the Special Rapporteur to elaborate on how he intended to focus on domestic migrant workers in his work.

30. **Mr. Quintaes** (Brazil) asked what the Special Reporter thought about the racial profiling used by certain law enforcement officials in developed countries, which was a barrier to the enjoyment of the rights of migrant workers.

31. **Ms. Solomon** (International Organization for Migration (IOM)) said that she appreciated Mr. Crépeau's framing of the issue of migration as neither bad nor good per se — that depended on the conditions under which it took place. Voluntary migration through legal channels could benefit individuals and societies of destination and origin alike. However, when migration was forced, individuals and their families suffered, as did societies. She agreed that in a mobile and globalized world, migration was a natural consequence and more legal channels must be created in recognition of labour market needs and the legitimate aspirations of individuals.

32. Taking the opportunity to welcome also the report by Mr. El Jamri, she said that IOM was an active member of the committee promoting ratification of the Convention and worked very closely with Governments willing to bring their national legislation into line with its standards. She reiterated that all human rights instruments applied to migrants as human beings. IOM had set up a dedicated global outreach department to advise Governments and stakeholders on the specific application of human rights instruments to migrants and she was pleased to say that more and more Governments were seeking their assistance.

33. Regretting a general climate of xenophobia and discrimination, she pointed out that the World Migration Report 2011, to be released during the 100th session of the IOM Council in December, was dedicated specifically to the perception of migrants and migration. It was hoped that the Special Rapporteur and the Chair of the Committee on Migrant Workers would continue to highlight the positive contribution of migration to societies. She offered her organization's support to them both in the execution of their mandates and asked if there were particular ways in which IOM might help in their efforts.

34. **Mr. de Bustemente** (Observer for the European Union) said that the cooperation between the United Nations and the European Union bodies dealing with asylum and migration constituted a fundamental tool for protecting the human rights of migrants and other vulnerable groups. As part of its anti-illegal immigration arsenal, the European Union had negotiated 13 readmission agreements with third countries, which provided for the return of migrants in irregular

situations, as well as smugglers and traffickers to their countries of origin. He asked whether the Special Rapporteur considered readmission agreements to be an effective deterrent and, concerning the role of the United Nations in countries of origin and transit, whether the United Nations could enhance its role in the successful reintegration of the victims of trafficking.

35. Many Member States were affected by rising international migration flows, which had led to a constant need to adapt and extend reception facilities. He asked what internal measures could be used and what the United Nations, particularly UNHCR, could do to ensure acceptable reception standards for migrants. Lastly, as European Union member States were fully aware of the obligation to protect minors' rights under the provisions of regional and international instruments, he asked how the phenomenon of unaccompanied minors crossing borders illegally could be reduced in a way that protected the rights of minors.

36. **Mr. Crépeau** (Special Rapporteur on the human rights of migrants), recalling that domestic workers were not all necessarily migrants and that their vulnerability often stemmed from the fact that they lived in their employers' homes, said that it was difficult to control what went on in the privacy of a home, as decades of work on family violence had shown. There was still work to be done, and he repeated that domestic workers would be on his agenda. The speed of the negotiation and adoption of ILO Convention No. 189 had been a strong signal from the international community that there was interest in the rights of domestic workers.

37. While racial profiling was not new — it might not have been a major issue in the past as racism was fought on other fronts — it had gained unprecedented prominence since 9/11. Racial profiling targeted not only migrants, but also domestic minorities. It had to be recognized that law enforcement mechanisms often had limited means of identifying individuals so it was important to train officers of the law on the consequences of racial profiling, making sure that legislation provided guidance.

38. He would be meeting with IOM later that day and would explore methods of collaboration. Creating more legal channels of migration was politically unpopular in many countries, owing to xenophobia that had been exacerbated by the current financial crisis and unemployment. It was important to find means to allow migrants to enter legally, as they would come anyway, and there were a number of ideas and solutions that could be proposed to States that had difficulty managing migration flows.

39. Readmission agreements were not bad in themselves and were examples of the exercise of territorial sovereignty. However, what mattered was making sure that the implementation of those agreements complied with the human rights framework, which was where such agreements fell short. They were governed by administrative law, whose standards were much lower than criminal law. It was legitimate to return irregular migrants, but not under procedures involving long-term administrative detention or deplorable holding conditions that offended their dignity. As methods used by Governments were somewhat shrouded in secrecy and detention centres were often inaccessible to external observers, cooperation in monitoring those methods was important to ensure that the process was legally, politically and socially legitimate.

40. With regard to how the United Nations could facilitate reintegration, it was vital to understand what drove migration and ensure solutions in line with the root causes. The same applied to traffickers and smugglers. The European Union had been a pioneer in trying to standardize reception conditions for asylum-seekers and refugees, and that was a useful approach for the future. It was important to work together to define what was acceptable when receiving large flows of migrants.

41. The issue of unaccompanied minors was a difficult one and it would be impossible to reduce it without understanding why they were travelling and what role they played in their families. Historically, communities had sent young ones far away in search of a better life or to find solutions for their problems at home. However, while those minors were in the territories of destination or transit countries, they should be treated in accordance with the human rights framework, no differently than any other children.

42. **Ms. Díaz** (Mexico) said that, having witnessed the effects of stricter immigration legislation and the criminalization of migration on the enjoyment of human rights, her country welcomed the Special Rapporteur's resolve to continue dealing with that issue. The human rights of migrants and their families was an important issue for Mexico, as evidenced by the holistic reform of legislation to protect the rights of migrants regardless of their status, which was the legal basis of

Mexico's migration policy. She would like to hear the Special Rapporteur's views on the political participation and the civil rights of migrants, and asked whether he intended to address that in the short term. She also enquired if the issue of migration in connection with climate change was a priority of his mandate.

43. **Mr. Hauri** (Switzerland) said that he agreed particularly with the need cited in the report (A/66/264) for more in-depth analysis of migration in connection with climate change. Switzerland had recently commissioned a study on that topic and would be happy to share its outcomes. The study had shown shortcomings in national and international protection mechanisms for migrant populations and also that the 1951 United Nations Geneva Convention did not apply to cross-border displacement resulting from natural disasters. Since the term refugees could not be applied, he asked if they could be called migrants and would be grateful if the Special Rapporteur could share his views on the matter. Switzerland supported the suggestion to continue discussion of migration in the context of climate change and asked what specific action was planned or already taken in that regard.

44. **Mr. Crépeau** (Special Rapporteur on the human rights of migrants) noted the justified preoccupation of Mexico concerning criminalization, regulation and discourse at the national and subnational levels. Migrants, regardless of their status, were also local residents dealing with local authorities and employers. Consequently, work had to be done to change not only legislation, but also discourse and attitudes. As he had said before, very often migrants did not speak out or complain about exploitation for fear of being sent back. Therefore, the issue of political participation and exercising one's rights was difficult for migrants, and it was important to find ways to ensure that migrants denounced exploitation and felt secure enough to do that, as regular citizens would do.

45. The issue of migration and climate change was still under study. While climate change was a proven fact and would have lasting effects, it was not yet known what the consequences on migration would be or when such movement would be triggered. However, climate migration had always existed. As global warming seemed to be speeding up, coastal states would probably face major challenges or even tragic consequences. Solutions to specific issues such as the vulnerability of populations in low-lying areas would have to be found. States themselves were beginning to research and plan for such eventualities, but they would need assistance. It was true that the status of refugee did not apply to climate migrants, a priori, but it applied to all victims of natural disasters.

46. However, if a State did not take the requisite measures to protect them or took discriminatory action, that might be a case of violation of their fundamental rights, which could be viewed as persecution. Sometimes, natural disasters were used to further marginalize vulnerable populations: racial profiling could be apparent in work planning or the distribution of assistance, with marked differences in the way some populations were treated. That was where refugee status could be useful. He was not sure whether it was necessary to create the status of climate migrant or propose a resolution or an international convention on that question. The studies being carried out were important as they provided insight on how to define the terms of the debate, but it was still three or four decades too early to take any decisions.

47. **Ms. Rolnik** (Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context), referring to the issue of whether existing approaches and guidelines to relief and reconstruction were sufficient with regard to the right to adequate housing, said that disaster response efforts had previously taken a narrow view of that right and, in some cases, had adversely affected victims. That was not surprising, since there was little guidance and practice for disaster response workers on the matter, and much of what was available focused on protecting internally displaced persons. Her report (A/66/270) discussed the human rights standards applicable to disaster response and attempted to bridge the gap between the need for more specific and comprehensive guidelines and the existing human rights guidance.

48. One of the challenges to the right to adequate housing in the wake of a disaster was the protection of vulnerable groups. Vulnerability was widely recognized as a key element in disaster risk reduction, but it was little known that discrimination affected people's ability to protect themselves and recover from disaster because the impacts were, to a large extent, anthropogenic. Disasters magnified and deepened inequalities: the poorest and most vulnerable groups often lost everything, even their lives.

49. Relief programmes could unwittingly exclude or further marginalize some groups, and reconstruction programmes had excluded displaced residents who could not produce documented proof of ownership, exposing them to land-grabbing and eviction. Taking such discrimination into account offered insights into failings in disaster prevention or response and also helped Governments and aid organizations to target programmes to address inequality and protect the most vulnerable.

50. Not all forms of tenure were equally recognized and protected. The term "informal settlers" referred to a diverse group of persons who were not individual owners of formerly registered property or who had multiple tenure arrangements. While security of tenure was the cornerstone of the right to adequate housing, individual ownership was not the only legitimate arrangement — there were many that were historically, culturally and politically rooted. Anyone with ties to the land or home where they lived before a disaster was recognized as a rights-holder. Yet, individually registered property owners tended to be given preference, as international agencies showed reluctance to invest in places of return or relocation where land tenure was unclear.

51. It was also particularly difficult to reconstruct in urban areas where the political economy of land was complicated and planning poor, as was the case in Haiti. The report had highlighted how policy and practice had evolved to recognize other forms of tenure, particularly through the use of participatory mechanisms to assess the pre-disaster state of occupancy and tenure. Those mechanisms offered promising and more flexible alternatives to established processes. In the short term, it was essential to assess pre-disaster tenure rights for effective reconstruction and recovery. Governments and aid agencies should bear in mind the importance of ensuring a minimum of tenure security and take the opportunity to address inequality.

52. The most marginalized were also exposed to land-grabbing and evictions in the wake of disaster, which offered a clean slate for ambitious development plans. The implications for human rights were not all positive, as disaster recovery efforts were sometimes guided by the so-called principle of "optimal use of land", which disregarded the rights of poor communities, evicting them to make way for business and tourism facilities or under the guise of groundless public safety or disaster risk mitigation concerns.

53. Such cases could be seen as forced eviction, and Governments must act with due diligence to ensure that disaster situations were not manipulated to serve the interests of a few to the detriment of the most vulnerable. Even when public safety concerns were legitimate, decisions on land use or housing must still be subject to human rights standards and weighed against the socio-economic costs of displacement and resettlement.

54. A final challenge to the realization of the right of housing was the risk of too great a focus on the technical and regulatory aspect of rebuilding physical structures, and not enough emphasis on the social aspect of rebuilding a habitat, a community with an adequate standard of living and the services, infrastructure and economic opportunities required to sustain return and recovery. That had been made clear on her visit to Haiti.

55. There was a divide between emergency efforts and long-term recovery, and the international community had difficulty managing the transition between the two. Focusing on individual beneficiaries and deliverables as ends in themselves could divert from the fundamental responsibility to respect rights and the requirement to work towards long-term recovery. She encouraged Governments, donors and international agencies to devise durable solutions and ensure a continuum of aid between relief and recovery. Further work could be conducted with regard to mechanisms to support fast-track determination of tenure rights; legal and practical measures to support those who were not individual owners of registered property; territorial planning and land use instruments for providing a technical and legal foundation for reconstruction; and access to land use and control in the event of natural disasters, including conditions for requisition and acquisition for shelter or settlement.

56. Placing the right to adequate housing at the core of reconstruction and recovery efforts was not only an obligation, but also an opportunity. Disaster response should not replace development efforts. It was an occasion to address the inequalities that disaster magnified and exacerbated and to contribute to the progressive realization of adequate housing for all. It was a difficult task, but a vital one, for human rights did not cease to exist when disaster struck — it was then that they mattered most.

57. **Mr. Gálvez** (Chile), while agreeing with the Special Rapporteur that each case was unique depending on the country's development and the extent of the damage, said that certain principles should be used to guide post-disaster reconstruction. One such principle was maintaining consultation with the populations affected. Chile had been and would probably continue to be hit by natural disasters such as earthquakes, tsunamis, volcanic eruptions and floods. In 1960 it had been struck by the biggest earthquake in human history, measuring 9.7 on the Richter scale, and in 2010 by another measuring 8.8, with over 200 aftershocks affecting over 12 million people and the country's main production centres.

58. The Government of Chile was doing all in its power to study the right to adequate housing for people affected by disaster, and it was important to document exhaustively the lessons learned in national reconstruction efforts. Special emphasis had been placed on allowing families to remain where they had lived prior to the disaster, even when they did not formally own or occupy their homes — only 20 per cent would be relocated owing to safety issues. The State had assumed 100 per cent of the reconstruction costs in all cases.

59. Another concern had been to prevent the work from falling into the hands of a small monopoly of construction companies and suppliers, whether national or international. Contracts had been signed through a transparent and open process with over 200 small and medium-sized hardware suppliers. The three largest hardware chains had accounted for only 25 per cent of all sales in the reconstruction effort whereas they usually garnered some 70 per cent of market share. Of the 187 construction companies hired, 183 were small and medium-sized enterprises actively involved in rebuilding over 85 per cent of the homes nationwide. Lastly, he appreciated the Special Rapporteur's inclusion of Chile in drafting her report following the 2010 earthquake, but thought that it could be complemented with further information on the Government's reconstruction efforts and invited her to see the situation in Chile on the ground.

60. **Ms. Skarpeteig** (Norway) said that the Special Rapporteur's pioneering report on an all-too-often neglected issue could be a useful tool to remedy that imbalance. Children were particularly vulnerable to abuse and attacks when their homes were demolished. She asked what could be done to ensure that their needs for shelter were not neglected. Noting that the right to adequate housing was increasingly a subject of judicial review and that jurisprudence had shown that housing rights were legally enforceable human rights, she asked whether the Special Rapporteur could provide any interesting or encouraging examples in that regard.

61. The Special Rapporteur might find it useful to apply the concept framework of "respect, protect and fulfil" in her analysis of the right to adequate housing post-disaster. Lastly, she asked what role local authorities, in cooperation with civil society, could play in ensuring the observance of rights after disasters, for example in land registries. The Special Rapporteur played a key role in implementing and promoting the right to adequate housing, and Norway fully supported her mandate, work and recommendations.

62. **Mr. Quintaes** (Brazil) said that Brazil had experienced a construction boom resulting from increased economic growth, which had led to strong demand for adequate housing. That demand had previously been limited by economic constraints and was only recently being addressed. The country would also be hosting major world sporting events in the next few years, which meant that many sites had to be built. A working group had thus been established within the Council for the Protection of Human Rights to ensure that none of the communities' rights to housing would be violated. He invited the Special Rapporteur to visit Brazil to follow up on those aspects and expressed solidarity with the Chilean people in the wake of the horrifying natural disaster that the country had experienced.

63. **Mr. Bin Haron** (Malaysia) said that adequate housing was an imperative aspect of economic, social and cultural rights and, as such, the Government placed great emphasis on providing quality and affordable housing for all Malaysians. It had launched the One Malaysia Housing Programme to increase home ownership among middle income earners and provide more affordable housing in big cities. In the interest of creating a caring society, the Programme had been developed for middle income groups who were unable to afford expensive homes, but ineligible for low-cost housing. Homes were priced between $48,000 and $95,000 in urban and suburban areas where there was high demand.

64. To ensure smooth management and delivery, the body responsible was directly under the supervision of

the Prime Minister's office. The aim was to provide a better future and more opportunities for Malaysians to own property. The National Housing Corporation had also implemented a special scheme constructing affordable homes for low-income groups and subsidizing repairs and reconstruction of dilapidated houses. The Government had spent in excess of $500 million over 12 years to ensure that low-income groups were not denied their right to adequate housing and would continue to provide economic justice for its people.

65. **Mr. Yahiaoui** (Algeria) said that the Special Rapporteur was one of three mandate holders who had accepted the invitation to visit his country and in July 2010 had met with Government and high-ranking officials, as well as civil society actors. In anticipation of the report on her country visit, the Government had noted with interest her preliminary conclusions relating to her mandate, and he assured her of Algeria's determination to continue constructive dialogue and cooperation to follow up on her recommendations for improving housing policy.

66. She would have noted the substantial efforts by the Government to improve the living conditions of citizens, with a project to build 2 million housing units and social housing provided free of charge to those with low incomes. Much had been done, but there was even more to be done, and it was urgent to meet the high demand for housing, especially for young people. In the medium and long term, the Government intended to establish a national housing policy based not only on demand, but also on social, cultural and environmental factors.

67. The Special Rapporteur had advocated the provision of some services and utilities in slums surrounding major cities. While those were indeed basic rights, he asked whether that might not perpetuate precarious conditions and increase demand, which remained high. The different levels of development, volume of demand for housing, and cultural and social realities unique to each country had to be considered.

68. **Ms. Rolnik** (Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context) said that it was important to note the information provided by the Chilean delegation and learn from the country's experiences. She hoped that there would not be a repeat of the disastrous earthquake that had affected practically every Chilean family. However, it was important to be aware that disasters were recurrent, particularly those directly linked to climate change. It was not only necessary to prepare, but also to act. It was important to learn from past experiences, using them to guide actions.

69. Ultimately, local authorities were the ones who would be in charge of reconstruction. It was true that their resources and power varied from country to country, but they would be at the forefront of relief efforts. To ensure respect for the rights of the most vulnerable, the key was making their voices heard. Given that cities and local governments were highly unequal, it was very likely that those voices would not be the first to be heard.

70. She was fully aware that local government officials were under pressure from people of power and influence, so businesses were most likely to profit in the aftermath of disaster. Mechanisms must be in place to ensure that the most vulnerable had genuine participatory input in reconstruction efforts. The real decisions were often taken elsewhere so it was important to ensure women's participation, as there were many examples of how women had often been left out of reconstruction.

71. With regard to the right to adequate housing, she said that it was very important to allocate significant sums of public funds, as Brazil, Malaysia and Algeria had done, to launch massive housing construction projects. After at least two decades dominated by new liberal thinking according to which the State should not provide funds for housing, it was worth acknowledging that some countries had challenged that thinking and provided funds to build adequate housing for those who could not afford market prices.

72. Construction was also a powerful strategy for economic recovery and growth — it provided jobs and was the perfect Keynesian measure to promote development. But from an industrial perspective, building a house was like building a car: it was simply a matter or producing and delivering a commodity. However, for the people in need, it was more than just a house — it was a home. It was important to have a roof over one's head, but for vulnerable groups, it was more important to be located where there were services and infrastructure available. A number of countries had undertaken massive construction projects on the

periphery of cities with no infrastructure or jobs or city life.

73. On the question of choosing to upgrade existing settlements or build new ones, she did not think it best to reason in absolutes. Both were needed, and each specific situation would call for a specific solution. Upgrading existing communities could sometimes be an effective and cost-effective way of providing adequate housing. If the location was too exposed to hazards or it was impossible to transform the community, resettlement was the better option, making sure that it was done in respect of human rights.

74. Lastly, she commended Brazil's initiative to create a working group to monitor the right to adequate housing because, as Special Rapporteur, she had been receiving several complaints and reports of violations of that right and forced evictions in the cities preparing to host the World Cup and Olympic Games. She recommended that Brazil should adopt a normative framework to deal with that situation and safeguard the right to adequate housing.

75. **Mr. Soemantri** (Indonesia) said that the right to adequate housing in post-disaster settings required special attention to improve disaster management and reconstruction. Indonesia supported the conclusions and recommendations of the report to integrate the fulfilment of that right in disaster management policy, as well as the need for the Guiding Principles on Internal Displacement in safeguarding the rights of victims. Recognizing that there were many recommendations in the report, he asked the Special Rapporteur which ones would be given priority in light of the complexity of the issues.

76. As a country prone to natural disaster, Indonesia was ready to share its best practices in disaster management and reduction, respecting the rights of victims in emergency response, immediate recovery and reconstruction. The country had comprehensive domestic legislation, as well as national and local disaster management boards and bodies, with sufficient financial and human resources. Those best practices had been applied following the many disasters that had struck in recent years, and the rehabilitation and reconstruction programme had been conducted with an approach of humanity, impartiality and neutrality and in the spirit of "build back better" and "delivering as one".

77. **Ms. Fries-Gaier** (Germany) said that Germany had been a main sponsor, with Finland, of Human Rights Council resolution 6/27 on adequate housing as a component of the right to an adequate standard of living. In her report, the Special Rapporteur had placed emphasis on the importance of tenure rights, namely of non-formal owners with insecure tenure and she asked if the Special Rapporteur could elaborate on her practical experiences on that issue. Secondly, on the matter of forced evictions, she requested the Special Rapporteur to describe and evaluate significant challenges related to the right to housing in the context of forced evictions outside the scope of disaster prevention, relief and recovery efforts.

78. **Mr. Hauri** (Switzerland) said that there had been many natural disasters in recent years, but climate change, rapid urbanization and population growth affected the way in which the right to housing and its implementation was conceived. The Special Rapporteur had mentioned that, in the event of natural disasters, the Guiding Principles on Internal Displacement were applied to ensure the right to housing for people who had moved within their countries' borders, while those who had moved across borders were not protected by that regime. He asked the Special Rapporteur how the right to housing for the latter category of persons could be guaranteed. It was important to ensure peaceful cohabitation between local populations and displaced persons, and her report had shown that the focus of humanitarian aid on displaced persons created tensions between them and host communities and hindered development. He therefore asked what measures could be taken to meet the needs of both populations.

79. **Mr. de Bustemente** (European Union) said that he welcomed the focus on the realization of the right to adequate housing in post-disaster settings and, after careful study of the report, subscribed to her findings on need to use a human rights-based approach to disaster response. He asked if the Special Rapporteur could elaborate further on how reinterpretation of the Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons could help prevent vulnerable groups from being disproportionably affected by disaster as a result of discrimination and neglect.

80. **Ms. Solomon** (International Organization for Migration (IOM)) said that, in the Inter-Agency Standing Committee (IASC), IOM was cluster lead in camp coordination and management in natural disaster situations and also shelter cluster lead in Haiti and Pakistan. IOM shared the Special Rapporteur's concerns about land tenure issues in Haiti, which had not been

clear before the disaster and which were impeding movement out of camps into sustainable housing. In an attempt to sort out those issues, a pilot community-based tenure mapping model dubbed "data tracking matrix" had been developed and was being used there and tested in other similar situations. The experience in Haiti had shown that many of the displaced had not had tenure rights and therefore had no right to return to a particular area. She thanked the Special Rapporteur for calling the Committee's attention to those issues and looked forward to working with her in building resilience and ensuring rights post-disaster.

81. **Ms. Rolnik** (Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context) said that one of the key issues was tenure — the cornerstone of the right to adequate housing in the context of relief and reconstruction. It was also a main feature of the situations that she had come across as Special Rapporteur, which were mainly forced evictions relating to developments, city beautification and the like. There were many texts providing a legal basis for protecting human rights in contexts where people were removed for their own safety, and such removal also fell under human rights.

82. Situations where the majority of a population lived under several types of ambiguous tenure arrangements were widespread in developing countries, and also in rental agreements in developed countries. Those people did not live like that for pleasure, but because they had no other options. The formal market was not open or affordable to them. Urban development and expansion was very exclusionary and was geared towards the business class and the well off. The vulnerable members of society, migrants included, had to make do with what was left — dilapidated homes, insecure tenure arrangements, settlement in peripheral areas without any infrastructure or basic services — and faced the ambivalence of politicians who only promised and delivered when they wanted the votes of those vulnerable persons.

83. However, as soon as those lands could be put to more profitable use, they were the first to be evicted. New infrastructure projects would be drawn up for informal settlement sites because it was cheaper to do so than in formal middle-income communities, where people had access to lawyers and would demand compensation if lands were to be expropriated. In informal settlements, where tenure rights were uncertain, it was easier to evict and displace.

84. In relief and reconstruction contexts, Haiti was an extreme example. Before the earthquake, 80 per cent of the population had lived in informal settlements with few or no services and unclear tenure rights. When the camps had been set up, some people had found themselves in less precarious situations, almost better off — with basic health care, services, and even employment opportunities. The s ion was thus not to build houses, but to upgrade neighbourhoods, preparing the neighbourhoods for the return of those displaced and improve progressively the condition of those who had not been affected by the earthquake and had remained.

85. Conflicts did sometimes arise when the seven elements of the right to adequate housing laid out in general comment No. 4 were not taken into consideration. That could cause discrimination and inequality between the victims and the non-victims. There was a need to rethink the scope of humanitarian assistance in relief and recovery, including the framework of the right to adequate housing. For example, relief efforts in Haiti should have already been given the opportunity to invest in existing neighbourhoods. That could only happen if the Government ended the ambiguity concerning informal settlements, declaring which would be upgraded and which should be relocated for the safety of the people who lived there. That would provide a sound legal basis for reconstruction. She would appreciate collaboration with the IASC and all agencies on that matter and planned to continue working to ensure security of tenure in informal settlements.

86. **Ms. Semasinghe** (Sri Lanka), speaking in exercise of the right of reply, said, with regard to the reference made to his country by the representative of Liechtenstein and the response provided by the Special Rapporteur on extrajudicial, summary or arbitrary execution, that his delegation was disappointed that persons mandated to report to the United Nations on human rights issues would use unrelated and unsubstantiated information that damaged the reputations of Member States. Sri Lanka had suffered the onslaught of a brutal terrorist group for over 27 years, with suicide bombings and indiscriminate killing of civilians. Thankfully, those had ceased when Government security forces defeated the terrorists.

87. The Government had subsequently adopted a policy of reconstructing war-damaged areas and returning former combatants to their own communities after a period of rehabilitation. As documented by UNICEF, the terrorists had recruited thousands of children, whom the Government had also returned to their families.

88. The elements that had sympathized with and funded the defeated terrorists were currently waging an international propaganda campaign, accusing the Government of human rights violations. A widely broadcast video to that effect had subsequently been proven false. It was very disappointing that the Special Rapporteur had chosen to adopt the propaganda line disseminated by the defeated terrorists and to make throw-away comments that could not be substantiated. War was not a pleasant exercise, and the Government of Sri Lanka had taken the utmost care to avoid killing civilians in line with its "zero civilian casualty" policy. Despite the unfounded numbers bandied about irresponsibly by the media, there was no hard evidence of large numbers of civilian deaths in the final stages of the conflict.

89. The 7,000 deaths alleged in a leaked United Nations document had been publicly disowned by the then Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Sir John Holmes. Other figures had been fabricated out of thin air, and the Government had painstakingly produced statistics to disprove those claims. The Lessons Learnt and Reconciliation Commission, appointed by the Government, was currently examining all aspects of the conflict, including accountability issues, and its report was expected the following month. Reiterating his disappointment that the Special Rapporteur had ignored those details, he said that the Government of Sri Lanka strongly rejected those ill-informed comments.

The meeting rose at 1 p.m.

United Nations A/C.3/66/SR.28

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Summary record of the 28th meeting
Held at Headquarters, New York, on Friday, 21 October 2011, at 3 p.m.

Chair: Mr. Haniff ..... (Malaysia)

Contents

Address by the President of the sixty-sixth session of the General Assembly

Agenda item 28: Advancement of women (*continued*)

(a) Advancement of women (*continued*)

Agenda item 65: Promotion and protection of the rights of children (*continued*)

(a) Promotion and protection of the rights of children (*continued*)

Agenda item 69: Promotion and protection of human rights (*continued*)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*)

(c) Human rights situations and reports of special rapporteurs and representatives (*continued*)

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The meeting was called to order at 3.05 p.m.

Address by the President of the sixty-sixth session of the General Assembly

1. **Mr. Al-Nasser** (President of the sixty-sixth session of the General Assembly) said that, while it was not a common tradition for the President of the General Assembly to address the Main Committees, he was pleased to have to opportunity to address all six committees during the current session to deliver a personal message of appreciation and encouragement.

2. He was deeply aware that the Third Committee played a critical role in promoting human rights, one of the three pillars of the United Nations. The issues currently before the Committee were particularly pertinent in view of emerging democracies calling for liberty, dignity and social justice. The Committee's work covered topics that were fundamental starting points for realizing the potential of democratic nations as well as essential elements of peaceful and secure livelihoods for all.

3. The Human Rights Council, as a subsidiary body of the General Assembly, played a crucial role in the worldwide protection and mainstreaming of human rights. Last year, the General Assembly had carried out negotiations on the review of the Council in order to strengthen its functions and methods of work. Everyone should benefit from the new practice of holding an interactive dialogue between the Third Committee and the President of the Human Rights Council. Furthermore, he acknowledged the leadership of the High Commissioner for Human Rights in supporting United Nations human rights efforts.

4. He urged members of the Committee to strive for consensus in their deliberations in order to ensure lasting, legitimate resolutions to the very complex issues before it, which would help alleviate the General Assembly's workload.

Agenda item 28: Advancement of women (*continued*)

(a) Advancement of women (*continued*) (A/C.3/66/L.18, L.20 and L.21)

Draft resolution A/C.3/66/L.18: Violence against women migrant workers

5. **The Secretary** said that, due to a technical error, the word "Also" had been omitted from paragraph 21 of the draft resolution. The paragraph would now read: "Also encourages concerned Governments ...".

6. **Ms. Hernando** (Philippines), introducing draft resolution A/C.3/66/L.18, said that Argentina, Belarus and Honduras had joined the sponsors.

7. Migration could create opportunities and promote economic independence for women. However, it had attendant risks because migrants had limited access to social services and legal protection. In particular, violence against women migrant workers needed to be addressed at all levels.

8. The draft resolution welcomed the adoption of International Labour Organization Convention No. 189 concerning Decent Work for Domestic Workers, the establishment of UN Women, and the Agreed Conclusions of the fifty-fifth session of the Commission on the Status of Women, in particular the commitment to implement gender-sensitive policies and programmes for women migrant workers. The need to address the vulnerability of the migrant population to HIV/AIDS and support their access to prevention, treatment, care and support was another new element of the draft resolution.

9. **The Chair** said that Peru had joined the sponsors.

Draft resolution A/C.3/66/L.20: Women and political participation

10. **Ms. Nemroff** (United States of America) said that the following countries had joined the sponsors of the draft resolution: Colombia, Cyprus, Georgia, Ghana, Honduras, Maldives, Monaco, Mongolia, Palau, the Republic of Moldova, the Republic of Korea, Tunisia, Turkey, Ukraine and the United Kingdom of Great Britain and Northern Ireland.

11. The need for proactive measures to ensure that women enjoyed their right to participate in political processes and decision-making on an equal basis with men had become increasingly evident, especially in times of transition. Discriminatory laws and practices persisted and women activists often faced exclusion from key political negotiations; consequently, the draft resolution underlined the need to ensure women's involvement in all aspects of political processes and decision-making.

Draft resolution A/C.3/66/L.21: Convention on the Elimination of All Forms of Discrimination against Women

12. **Ms. Leveaux** (Sweden), introducing draft resolution A/C.3/66/L.21 on behalf of the Nordic Countries, said that 2011 marked the thirtieth anniversary of the entry into force of the Convention. Since the purpose of the draft resolution in previous years, to urge universal ratification of the Convention, had nearly been achieved, the aim of the current draft resolution was to ensure that the issue remained on the agenda while allowing time for a more thorough discussion on how to proceed, taking into account the ongoing discussions on treaty body strengthening and reform.

13. **The Chair** said that the following countries had joined the sponsors: Andorra, Benin, Bolivia (Plurinational State of), Canada, the Dominican Republic, Ethiopia, Georgia, Japan, Liechtenstein, Maldives, Monaco, Mongolia, Peru, the Republic of Korea, the Republic of Moldova, Serbia, Turkey, Ukraine and Uruguay.

Agenda item 65: Promotion and protection of the rights of children (*continued*)

(a) Promotion and protection of the rights of children (*continued*) (A/C.3/66/L.22)

Draft resolution A/C.3/66/L.22: Strengthening of the Coordination of the United Nations System on Child Protection

14. **Mr. Srivali** (Thailand), introducing draft resolution A/C.3/66/L.22, said that the protection of children must be a high priority in every country and the support that Member States received from the United Nations system could be pivotal to success in that regard. The draft resolution was aimed at improving the coordination, coherence and collaboration of the United Nations system on the issue of child protection, in order to further support capacity-building for Member States and the sharing of best practices.

15. **The Chair** said that Myanmar had joined the sponsors.

Agenda item 69: Promotion and protection of human rights (*continued*) (A/66/87)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/66/156, A/66/161, A/66/203, A/66/204, A/66/216, A/66/225, A/66/253, A/66/254, A/66/262, A/66/264, A/66/265, A/66/268, A/66/269, A/66/270, A/66/271, A/66/272, A/66/274, A/66/283, A/66/284, A/66/285, A/66/289, A/66/290, A/66/293, A/66/310, A/66/314, A/66/325, A/66/330, A/66/342 and Add.1 and A/66/372)

(c) Human rights situations and reports of special rapporteurs and representatives (*continued*) (A/66/267, A/66/322, A/66/343, A/66/358, A/66/361, A/66/365, A/66/374 and A/66/518)

16. **Mr. LaRue Lewy** (Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression) said that his report (A/66/290) focused on the right to freedom of opinion and expression exercised through the Internet and addressed the issue through two equally important dimensions: access to online content and access to Internet connection. His main recommendation to all States was to maintain the free flow of information and ideas on the Internet, and to ensure that the Internet was made widely available, accessible and affordable to all.

17. The Internet had become a vital tool to connect individuals everywhere and had played a key role in mobilizing the peaceful and democratic movements taking place around the world. However, the potential of the Internet as a catalyst for change had generated fear among Governments and the powerful, leading to the adoption of increasingly sophisticated technologies to censor content, and to identify and monitor individuals who expressed critical opinions.

18. Even though the Internet could be used to cause harm, as a general rule, there should be as little restriction as possible to the flow of information. His report clarified the differences between illegal contents, which States were required to prohibit under international law, and those considered harmful, offensive, objectionable or undesirable, but which States were not required either to prohibit or to criminalize.

19. Internet usage continued to lag behind in developing countries. States needed to play a proactive role by making the Internet more affordable, and facilitating access. His report described the actions taken by the Governments of Brazil and Ecuador in that regard. He also encouraged States to provide support for training in information and communications technology skills, which could be done by integrating Internet literacy into school curricula. An example was the ThutoNet programme in Botswana, which aimed not only to provide all schools in the country with computers and access to the Internet, but also to train teachers on how to use such skills as a classroom tool.

20. **Ms. Morch-Smith** (Norway) said that, in his report, the Special Rapporteur had indicated that any legislation restricting the right to freedom of expression should be applied by a body that was independent of any political or commercial influences (para. 17); she asked him to elaborate on why he considered that important.

21. It would also be useful if he would expand on the role of Governments in fully guaranteeing the right to privacy of all individuals. Norway agreed that in the absence of such a guarantee the right to freedom of opinion and expression could not be fully enjoyed, because new technologies could make journalists and human rights defenders more vulnerable.

22. Access to the Internet was essential for a truly democratic society and it would be useful to know what more could be done to ensure full access for women and disadvantaged groups.

23. **Mr. Andrade** (Brazil) said that respect for freedom of expression on the Internet was one of the main challenges in the field of human rights. Nevertheless, Brazil considered that the United Nations human rights system already had tools and mechanisms to monitor compliance with the commitments made by States concerning freedom of opinion and expression on the Internet.

24. He thanked the Special Rapporteur for mentioning Brazil's public policies concerning access to the Internet for people with lower incomes and schools. His Government was very much aware of the importance of providing access to the Internet as a component of achieving human rights.

25. **Ms. Reckinger** (Observer for the European Union) said that the European Union had noted that there were pending requests to visit several countries, including the Bolivarian Republic of Venezuela, the Islamic Republic of Iran, Sri Lanka, Tunisia and Uganda; it urged those countries to use the Special Rapporteur's expertise to strengthen their commitment to their international obligations. It also noted the Special Rapporteur's attempts to distinguish between different types of expression and would welcome ongoing discussion on the issue.

26. Government restrictions on Internet content should be strictly limited. Citizens must be allowed to discuss and debate issues, challenge their Governments and make informed decisions. It was important for individuals to be able to enjoy the right of freedom of expression as well as other rights such as freedom of association and assembly. Recent events in Tunisia, Egypt and Libya had shown that limiting freedom of expression had not created stability or made grievances go away. It would be interesting to know whether the Special Rapporteur had been cooperating with regional human rights mechanisms in that regard.

27. The European Union was working to reduce the digital divide for disadvantaged groups, and would be interested to hear more about the ThutoNet programme in Botswana and whether it could serve as a model for other countries. The report had underlined the key role of equal and effective access to the Internet for women in promoting their empowerment; further information on the research project in India that focused on the use of information and communication technology to promote women's entrepreneurship would be appreciated.

28. Lastly, the European Union welcomed the recommendation that the development of Government strategies and policies should be based on stakeholder consultations and supported multi-stakeholder global, regional and national Internet governance discussions.

29. **Mr. Yahiaoui** (Algeria) said that the Special Rapporteur had visited Algeria in April 2011 and the decisions taken at that time by the President were now being implemented; in particular regarding the opening up of the audio-visual media to the private sector.

30. Algeria reiterated its willingness to collaborate with the Special Rapporteur, acting within his mandate and respecting the Code of Conduct for Special Procedures Mandate-holders. It was necessary to have

confidence in the information provided by national authorities, rather than relying on allegations without corroborating them with the country concerned.

31. He asked the Special Rapporteur how free access to Internet could be ensured in the less developed countries, especially in rural areas, in the absence of such basic services as electricity.

32. **Mr. Sammis** (United States of America) said that his delegation would like further information about what the Special Rapporteur had described in his report as the relationship between Internet access and the empowerment of women, in particular with regard to employment and citizen participation. It agreed that there should be more research into the matter, and would be interested in his thoughts on other initiatives that should be supported at both the national and the international levels.

33. **Mr. Luhan** (Czech Republic) asked whether the Special Rapporteur agreed that the freedom to receive and impart information via the Internet was becoming vital for preserving a democratic political debate within States, with specific accent on the period around elections. Furthermore, his delegation found the idea of limiting intolerant speech by more speech, rather than through bans and sanctions, extremely important and worth further examination. In that regard, it would be useful if the Special Rapporteur could provide some positive examples of how the promotion of tolerance and mutual respect through the Internet helped overcome tensions within societies.

34. Lastly, the Czech Republic endorsed the emphasis that the Special Rapporteur had placed on ensuring the wide availability and accessibility of Internet, and the role it could play in ensuring the participation of all segments of society in political and social life.

35. **Mr. Roch** (Switzerland) said that recent events had recalled the important role of new media in the context of democratization and claims for fundamental rights. The Internet and the new media using it represented an unprecedented opportunity, but also new challenges.

36. Many States tried to control the use of the Internet or restrict access and limit content, but Switzerland called on all States to facilitate access to the Internet for everyone, without discrimination. By helping marginalized groups to accede to the Internet, the State was providing them with access to the information and knowledge society and, thereby, to their autonomy.

37. Access was especially important in closed societies or in times of conflict. However, guaranteeing the functioning of Internet access was the task of the private sector; it would be useful to know how the international community could collaborate with the private sector to promote Internet access and to protect freedom of expression in all circumstances.

38. **Ms. Ploder** (Austria) said that the report had mentioned that, in addition to legal regulations that fully respected human rights, digital literacy training was of crucial importance to ensure that the Internet had a positive effect and that such training should clarify the benefits not only of accessing information online, but also of responsibly contributing information. She asked the Special Rapporteur to provide examples of relevant good practices that promoted the full enjoyment of human rights, while avoiding abuse.

39. Regarding Internet access, the report indicated that States had a positive obligation to create an enabling environment to exercise the right to freedom of opinion and expression, and she asked how States should comply with that obligation.

40. **Mr. Gómez** (Sweden) said that Sweden had noted with concern the attempts of Governments to censor and filter Internet content that went far beyond the four permissible categories outlined in the Special Rapporteur's report, and reiterated its strong commitment to keep the Internet free and open. In that regard, it welcomed the recent decision of the Human Rights Council to hold a panel discussion on the matter early in 2012.

41. Human rights issues had figured prominently during the recent Internet Governance Forum in Nairobi and several new initiatives had been discussed to create a set of principles for the governance of the Internet. He asked the Special Rapporteur to outline the role that the United Nations human rights bodies, such as the Human Rights Council and the Third Committee, could play, based on his report's findings concerning the applicability of the existing legal obligations, and whether it should be directed towards enforcement of those obligations or towards the creation of an enabling environment.

42. **Mr. Toro-Carnevali** (Venezuela) said that the observer for the European Union had questioned the right of Venezuelan citizens to participate in the country's democratic process. Consequently, his delegation wished to insist that Venezuelan citizens were able to exercise all the rights necessary to organize and to express their opinions peacefully and enjoyed a vibrant and participatory democracy.

43. Venezuelans could accede to any webpage or to any national means of communication without restrictions of any type. Over the past 12 years, the State had democratized the media, by granting licences to many hundreds of new means of communication. Moreover, despite the role played by some private media in trying to destabilize the State, the Government had never suspended, seized or closed any of them.

44. **Ms. Alsaleh** (Syrian Arab Republic) said that, in his report, the Special Rapporteur had expressed concern regarding the lack of Internet access and the digital divide between developed and developing countries, which exacerbated the lack of development as well as the social and economic differences both between and within countries, together with the lack of access to many human rights. Thus, he had suggested that the State's responsibility to provide Internet access to its population formed part of its protection of the right to freedom of opinion and expression. Her delegation wished to know how the foregoing could be reconciled with fact that a large number of developed countries rejected that focus by creating obstacles to access to information and communications technology by developing countries.

45. It would also be interesting to know the Special Rapporteur's opinion on the need to transfer technology to all developing countries without any restrictions whatsoever and about the effects of economic sanctions imposed unilaterally by developed countries that affected the free and unrestricted access to technology by developing countries and their people's enjoyment of the right to freedom of opinion and expression.

46. The report stated that the Internet could primarily be used as a positive tool to increase transparency over the conduct of those in power. That comment was tantamount to interfering in the internal affairs of States. Parliament and Government had sole responsibility for controlling the authorities and their actions. The right to freedom of opinion and expression could not be used as a tool to achieve certain goals or to inflame public opinion against the Government.

47. **Mr. Ulibarri** (Costa Rica) said that the closing of the digital divide was not only a matter of resources and access to technology, but also of appropriate policies that respected the rule of law and tolerance of differences.

48. The Special Rapporteur had indicated that States were obliged to guarantee a free flow of ideas and information and the right to seek and receive as well as to impart information and ideas over the Internet. Some examples of the specific actions that States should undertake to put that recommendation into practice would be useful.

49. **Mr. LaRue Lewy** (Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression) said that he recognized that there was a digital divide not only between developed and developing countries but also within each country. He had found countries where technology and research were highly developed, but few people were interconnected.

50. Algeria had invited him to visit the country on its own initiative and, responding to the question it had posed, he agreed that many poor communities had difficulty in obtaining basic services, including electricity. However, he had found that many African countries were resolving access to Internet with mobile technology. The overlap between Internet connectivity and mobile cellular communication was growing. Evidently, the service was not the same, but it was a first step towards guaranteeing access.

51. It was fundamental to understand that communication was a stepping stone towards development, because it brought people into contact with national development programmes, and encouraged them to exercise their citizenship and rights. Freedom of expression was essential in order to get potable water and electricity, especially for the poorest and most remote communities, and that was why he had brought up the issue of access.

52. Several questions had been asked regarding censorship. He had observed a growing trend to use criminal law to criminalize speech over the Internet that must be halted. The Internet should be seen as a public space where people could meet, communicate

and exchange ideas. Evidently, there were risks, but he believed that the risks could be overcome by a strong democratic society. Thus he had said that the response to hate speech and intolerance was more speech in order to increase levels of communication, understanding and dialogue.

53. He had taken part in discussions on hate speech within several United Nations bodies and everyone had reached the same conclusion: the best State policy was prevention. It was much easier to prevent crises, conflicts, intolerance and hate speech than to prohibit them; prohibitions did not solve the structural causes that could be resolved with better understanding and communication.

54. Many questions had been asked about the empowerment of women and other sectors. He strongly believed that freedom of expression was an essential element to eliminate impunity, especially in cases of domestic violence, sexual abuse and gender discrimination. In addition, the Internet could create equal participation and job opportunities. A special effort had been made in Guatemala to train rural women to use the Internet with remarkable results in terms of empowering them and increasing their self-esteem.

55. The same applied to minorities who were often silenced or discriminated against; promoting their freedom of expression and enhancing dialogue with them was essential, and the Internet could play an important role.

56. As a follow-up to his report, he would like to analyse accessibility policies and good practices that were being implemented around the world in order to show what was possible when a Government had the political will. He also wanted to examine decriminalization efforts in relation to freedom of expression.

57. Regarding the concern raised that the Internet could be used to turn public opinion against public officials, he believed that public office went hand in hand with public scrutiny, and public scrutiny went hand in hand with public criticism. Even if, at times, the criticism was unwarranted, it was essential for democracy. People should be able to speak their minds, criticize their authorities, know how political decisions were made, or how public resources were being spent. That knowledge allowed the population to influence policies, which was precisely the essence of democracy and, in that regard, the Internet had become a very important tool. He encouraged anyone in public service not only to be open to the new technologies, but to see them as allies, because the greater the transparency, the more robust the democratic regime and the stronger and safer the nation.

58. **Ms. Knaul** (Special Rapporteur on the independence of judges and lawyers) said that during her second year as Special Rapporteur, she had focused on the integration of a gender perspective and women's human rights into the work of her mandate, and her second report to the Human Rights Council (A/HRC/17/30) had addressed some of the major obstacles that women encountered in access to justice.

59. The report before the Committee (A/66/289) examined the need to consider and integrate a gender perspective into the criminal justice system as a fundamental step towards allowing equal access to justice for women and men and the role that judges and lawyers should play. It was the pervasive historical discrimination against women throughout the world that compelled her to look at how women were treated under the criminal justice system.

60. She considered that the representation of women among judicial officers was an important requirement for an independent and impartial judiciary. Yet, having women in the judiciary did not in itself guarantee the inclusion of a gender perspective, since both men and women were prone to gender-based biases, stereotypes and prejudices. That was why she had underlined the need to create and strengthen training and capacity-building programmes on international human rights law and jurisprudence, in particular gender equality and women's rights, for judicial actors.

61. Gender-based discrimination was also a serious concern with regard to women's participation in the criminal justice system. Such discrimination could be particularly blatant when women were victims of gender-based violence, but could also play a major role in respect of non-gender based crimes experienced by women. Prosecution of gender-based crimes should be based on an institutional policy and that required integrating a gender perspective into the criminal justice system as well as the institutionalized and sustained training of prosecutors.

62. Although her report focused on the criminal justice system, considerations of gender were crucial in the context of the role of judges, prosecutors and

lawyers in non-criminal law settings, or in personal status law and jurisprudence. Comprehensive reform, policies and programmes needed to be designed, implemented and monitored in all branches of the State to make justice work for women.

63. While not a definitive or comprehensive overview of women in the criminal justice system, the report provided a starting point to encourage stakeholders to study and understand the effects that gender-based stereotypes and discrimination had on both women and men in their access to and engagement with the justice system.

64. In conclusion, she referred to the global thematic study on capacity building for judicial actors that the Human Rights Council had requested her to prepare ((HRC/l5/3). The first stage would include a questionnaire requesting information from all relevant actors and stakeholders and she hoped to receive the full cooperation of Member States by obtaining comprehensive, substantive and updated information in their replies.

65. Following presentation of the study to the Human Rights Council during its twentieth session, a second stage of the project would involve regional consultations with Government authorities and representatives of the judicial sector to identify existing institutions and programmes and best practices. The outcome of the two-stage process should enable her to prepare a document on capacity-building guidelines to be discussed at an international conference.

66. **Ms. Rasheed** (Maldives) said that the Maldives wished to thank the Special Rapporteur for her guidance on the establishment of an independent judiciary under its new Constitution. It was also pleased by the recognition in the report of legitimacy as the key to the authority of an independent judiciary, which was increased when its composition reflected the population over which it presided. Maldives had begun to make progress in that area by promoting the participation of women and was particularly proud of the achievements of Ms. Shujune Muhammad, currently Vice-Chair of the Subcommittee on Prevention of Torture.

67. The Government recognized that the independence, professionalism, accountability and acceptance of the judiciary by the people were key challenges in the democratic transition and had pledged to continue to work closely with the Special Rapporteur and the International Commission of Jurists.

68. **Mr. De Léon Huerta** (Mexico) said that, following the Special Rapporteur's visit, Mexico had amended its Constitution in the area of criminal law and human rights. In addition, the judiciary had made a commitment to follow up on her recommendations. Recently, changes had been made in the action for amparo, the purpose of which was to provide judicial protection to any individual who had suffered a violation of his human rights owing to the acts of a State authority. The range of rights that could be protected had been expanded by incorporating the international treaties in the list of guarantees that could be claimed, and the remedy had been extended to include not only the acts of the authorities, but also their omissions.

69. Mexico understood that the issue of providing human rights training to judges and lawyers was extremely important, especially in view of the constitutional reform, which required them to have a better knowledge of international instruments and jurisprudence. It therefore considered that the questionnaire and its follow-up mentioned by the Special Rapporteur would be most useful.

70. **Ms. Razzouk** (United States of America) said that her delegation welcomed the report's focus on both the administration of justice for women and the need for developing a gender-sensitive judiciary as well as the role of the judiciary in advancing women's rights. The report called attention to the challenges that religious, cultural or local customs could sometimes pose to the application of equal legal protection to women. She asked whether the Special Rapporteur had any specific recommendations concerning actions the United Nations could consider in order to address those challenges more effectively.

71. **Mr. de Bustamante** (Observer for the European Union) said that the report's findings revealed that women continued to face discrimination under the criminal justice system and recommended compulsory institutionalized training on gender equality and women's rights for the judiciary and members of the legal profession. Regarding the parallel need to safeguard and uphold judicial independence, he asked whether the Special Rapporteur had any examples of best practices that could serve as guidance.

72. The Special Rapporteur had pointed out that gender stereotyping was one of the main causes of discrimination against women under the criminal justice system, particularly in cases of gender-based violence. She had also mentioned discriminatory laws that directly limited women's access to the criminal justice system. It would be useful if she could provide examples of how those issues should be addressed nationally and internationally.

73. The report also noted that women were disproportionately targeted by sentences that amounted to torture and other cruel, inhuman or degrading treatment or punishment, such as stoning and flogging, which were prohibited under international law. The Special Rapporteur should clarify why women were at a higher risk of facing such sentences and how compliance with international law could be ensured.

74. **Ms. Knaul** (Special Rapporteur on the independence of judges and lawyers), referring to gender stereotypes, said that it was important to keep in mind the definition she had given in her report. Gender stereotypes were diverse and created by historical, cultural, social or environmental factors. Some examples were the exclusion of women from judicial office because the legal profession had been and often still was considered a male domain. The stereotypical role of women in society and in the family as caretakers meant that women appointed to office often had to face bias and discrimination. Gender stereotyping also affected proceedings in cases of rape and violence against women, and her report (para. 48) had given many examples.

75. Delegates had asked for examples of good practice and, in paragraph 29 of her report, she had indicated that, in South Africa, the Constitution provided for greater gender representation in the Judiciary and had mentioned the Virtue Foundation's Women Judges in the Pipeline Initiative and the programme Calling African Women Lawyers.

76. With regard to women who were before the justice system, in paragraph 40, she had referred to the use of international law by national judges in a case before the Supreme Court of Canada concerning the elimination of discrimination against women. Also, as she had described in her report (para. 50), the International Tribunals for the former Yugoslavia and Rwanda and, later, the International Criminal Court, had introduced some progressive measures regarding rules of procedure and evidence when women were victims.

77. Regarding the prosecutor's role, under the Rome Statute the prosecutor was charged with investigating and prosecuting crimes in a way that respected the interests and personal circumstances of victims and witnesses, including gender, and was required to take into account the nature of the crime, particularly when it involved sexual or gender violence or violence against children.

The meeting rose at 5.40 p.m.